

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

DWIGHT BOWEN, on behalf of his)
minor daughter,)
Petitioner,)
v.) C.A. No. 10-11034-NG
)
DEPARTMENT OF CHILDREN AND)
FAMILIES, ET AL.,)
Respondents.)

ORDER RE: CERTIFICATE OF APPEALABILITY

GERTNER, D.J.

On June 25, 2010, this Court entered a final order dismissing petitioner's petition for writ of habeas corpus under 28 U.S.C. § 2254 on behalf of his minor daughter. Petitioner appealed the dismissal, and on August 10, 2010, the United States Court of Appeals for the First Circuit entered an Order directing this Court either to issue or deny a certificate of appealability within two weeks. See Bowen v. Department of Children and Families, et al., No. 10-1843 (1st Cir. 2010) (Order dated Aug. 10, 2010).¹

Petitioner has not submitted in writing any grounds for his appeal. In light of this, and for the reasons set forth in the Memorandum and Order for Dismissal (Docket No. 3), this Court cannot find that petitioner has demonstrated any basis for a Certificate of Appealability to issue. Such relief should only

¹Contemporaneous to that Order, the First Circuit Court of Appeals issued an Order to petitioner to show cause on or before August 31, 2010 why he should be allowed to litigate this action on behalf of his minor daughter, or in the alternative, counsel must file an appearance on her behalf.

be granted upon a "substantial showing" of a constitutional violation. Slack v. McDaniel, 529 U.S. 473, 483 (2000). This means that petitioner "must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Id. at 484.

The petition was dismissed because federal habeas corpus relief is not available to challenge state child custody rulings. See Lehman v. Lycoming County Children's Services Agency, 458 U.S. 502 (1982); Sylvander v. New England Home For Little Wanderers, 584 F.2d 1103 (1st Cir. 1978). See also Hemon v. Office of Public Guardian, 878 F.2d 12 (1st Cir. 1989). Petitioner presents no factual circumstances or legal arguments that would distinguish the controlling case law in this area and therefore has failed to make a substantial showing that this Court's assessment of the constitutional claims was debatable or wrong.

Accordingly, this Court DENIES a Certificate of Appealability. The Clerk shall transmit this Order to the First Circuit Court of Appeals forthwith.

SO ORDERED.

Dated: August 11, 2010

/s/ Nancy Gertner
Nancy Gertner, U.S.D.J.